

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT**

IN RE ,

Debtor.

BAP No. XX-00-000

,

[Plaintiff] – Appellant,

Bankr. No. 00-00000
Chapter 7

v.

,

[Defendant] – Appellee.

BRIEF OF [APPELLANT]

Oral argument is [or is not] requested. 10th Cir. BAP L.R. 8010-1(b).

Name of Counsel or Pro Se Party

Name of Law Firm (if applicable)

Address

Telephone Number

Fax Number

TABLE OF CONTENTS

STATEMENT OF THE BASIS OF APPELLATE JURISDICTION	1
STATEMENT OF THE ISSUES PRESENTED AND APPLICABLE STANDARD OF REVIEW	1
STATEMENT OF THE CASE	2
STATEMENT OF FACTS	2
SUMMARY OF ARGUMENT	3
ARGUMENT	3
CONCLUSION	3
STATEMENT OF REASONS FOR ORAL ARGUMENT [IF ARGUMENT IS REQUESTED]	3
STATEMENT OF RELATED CASES [IF ANY]	3
ADDENDUM (TEXT OF RELEVANT STATUTES)	4

TABLE OF AUTHORITIES

Cases

<i>Catlin v. United States</i> , 324 U.S. 229 (1945)	1
<i>Deyhimy v. Rupp (In re Herwit)</i> , 970 F.2d 709 (10th Cir. 1992)	1
<i>Fowler Bros. v. Young (In re Young)</i> , 91 F.3d 1367 (10th Cir. 1996)	1
<i>Furst v. Furst (In re Furst)</i> , 206 B.R. 979 (10th Cir. BAP 1997)	1
<i>Las Vegas Ice & Cold Storage Co. v. Far West Bank</i> , 893 F.2d 1182 (10th Cir. 1990)	2
<i>LeMaire ex rel. LeMaire v. United States</i> , 826 F.2d 949 (10th Cir. 1987)	2
<i>McEwen v. City of Norman</i> , 926 F.2d 1539 (10th Cir. 1991)	2
<i>Moothart v. Bell</i> , 21 F.3d 1499 (10th Cir. 1994)	2
<i>Pierce v. Underwood</i> , 487 U.S. 552 (1988)	1
<i>Quackenbush v. Allstate Ins. Co.</i> , 517 U.S. 706 (1996)	1
<i>Salve Regina College v. Russell</i> , 499 U.S. 225 (1991)	2

Statutes

10th Cir. BAP L.R. 8010-1(e)	3
10th Cir. BAP L.R. 8018-1(f)	3
28 U.S.C. § 158(a)(1)	1
28 U.S.C. § 158(c)	1
Fed. R. Bankr. P. 8001(e)	1
Fed. R. Bankr. P. 8002(a)	1
Fed. R. Bankr. P. 8013	1, 2

STATEMENT OF THE BASIS OF APPELLATE JURISDICTION

State why this Court has jurisdiction over the instant appeal.

For example:

First, the notice of appeal was timely filed because it was filed within ten days after entry of the order or judgment being appealed. Fed. R. Bankr. P. 8002(a); *Deyhimy v. Rupp (In re Herwit)*, 970 F.2d 709, 710 (10th Cir. 1992); *see Furst v. Furst (In re Furst)*, 206 B.R. 979, 980 (10th Cir. BAP 1997).

Second, the appeal is from a final order. 28 U.S.C. § 158(a)(1). A decision is considered final if it “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.” *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 712 (1996) (quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945)).

Third, no party has filed a valid election to have the appeal heard by the District Court. 28 U.S.C. § 158(c); Fed. R. Bankr. P. 8001(e).

STATEMENT OF THE ISSUES PRESENTED AND APPLICABLE STANDARD OF REVIEW

State the issues presented in the appeal and the standard of review that applies to each issue.

For example (standard of review):

“For purposes of standard of review, decisions by judges are traditionally divided into three categories, denominated questions of law (reviewable *de novo*), questions of fact (reviewable for clear error), and matters of discretion (reviewable for ‘abuse of discretion’).” *Pierce v. Underwood*, 487 U.S. 552, 558 (1988); *see* Fed. R. Bankr. P. 8013; *Fowler Bros. v. Young (In re Young)*, 91 F.3d 1367, 1370 (10th Cir. 1996).

De novo review requires an independent determination of the issues, giving

no special weight to the bankruptcy court's decision. *Salve Regina College v. Russell*, 499 U.S. 225, 238 (1991).

A factual finding is “clearly erroneous” when “it is without factual support in the record, or if the appellate court, after reviewing all the evidence, is left with the definite and firm conviction that a mistake has been made.” *Las Vegas Ice & Cold Storage Co. v. Far West Bank*, 893 F.2d 1182, 1185 (10th Cir. 1990) (quoting *LeMaire ex rel. LeMaire v. United States*, 826 F.2d 949, 953 (10th Cir. 1987)). In reviewing findings of fact, the Court is compelled to give due regard to the opportunity of the bankruptcy court to judge the credibility of the witnesses. Fed. R. Bankr. P. 8013.

“Under the abuse of discretion standard[,] ‘a trial court’s decision will not be disturbed unless the appellate court has a definite and firm conviction that the lower court made a clear error of judgment or exceeded the bounds of permissible choice in the circumstances.’” *Moothart v. Bell*, 21 F.3d 1499, 1504 (10th Cir. 1994) (quoting *McEwen v. City of Norman*, 926 F.2d 1539, 1553-54 (10th Cir. 1991)). When applying the abuse of discretion standard, the Court must give deference to the bankruptcy court “because of its first-hand ability to view the witness or evidence and assess credibility and probative value.” *Id.* (quoting *McEwen*, 926 F.2d at 1553-54).

STATEMENT OF THE CASE

Specify the nature of the case (what the case is about), the course of the proceedings, and the disposition in the court below.

STATEMENT OF FACTS

State the relevant facts, including citations to the record (cite to specific pages of the Appellant’s appendix).

SUMMARY OF ARGUMENT

Include a summary of the points made in the argument section. This section is optional.

ARGUMENT

Include the contentions with respect to the issues presented, the reasons for those contentions, and citations to authorities, statutes, and parts of the record (cite to specific pages of the Appellant's appendix).

CONCLUSION

Include the precise relief sought.

STATEMENT OF REASONS FOR ORAL ARGUMENT [IF ARGUMENT IS REQUESTED]

If oral argument is requested, a statement of the reasons why argument is necessary must follow the conclusion of the brief. 10th Cir. BAP L.R. 8010-1(e).

STATEMENT OF RELATED CASES [IF ANY]

If a party knows of a related case pending before the United States Supreme Court or any United States Court of Appeals, District Court, or Bankruptcy Appellate Panel, the party must include as the last page of its brief a statement listing the related case(s). A related case is one that involves substantially the same litigants and substantially the same fact pattern or legal issues as the pending appeal. 10th Cir. BAP L.R. 8018-1(f).

ADDENDUM (TEXT OF RELEVANT STATUTES)

Include the text of Bankruptcy Code, United States Code, or State Law sections, or other regulations or rules, that are relevant to the appeal. The sections may be included in the addendum or may be reproduced separately.